

DECISION

25145
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-210137**DATE:** May 16, 1983**MATTER OF:** Service & Sales Inc.**DIGEST:**

1. While the procurement of critical items may be restricted to approved sources pursuant to Defense Acquisition Regulation § 1-313, neither that regulation nor the Air Force's supplemental regulation precludes award to a nonmanufacturer offering an approved source's product.
2. Protest that prospective awardee offering another company's items does not have that company's express authorization to do so is dismissed, since whether the prospective awardee in fact can supply the items is a matter of responsibility and, absent circumstances not present, GAO will not review a contracting officer's affirmative responsibility determination.

Service & Sales Inc. protests the award of a contract for metal seal rings to Alamo Aircraft Supply, Inc. under Air Force solicitation No. FD205083-73445. Service complains that Alamo is not an approved source for the items, and did not have an approved source's approval, before award, to offer the items.

The protest is denied in part and dismissed in part.

The solicitation identified the metal seal rings by a Garrett Turbine Engine Company part number. The rings are critical items that generally are procured from approved sources. See Defense Acquisition Regulation (DAR) § 1-313 (1976 ed.). Alamo is supplying rings secured from Precision Piston Rings, Inc., which manufactures them for Garrett.

Service, an approved source for the Garrett item, first complains that Alamo is not an approved source, and did not properly seek such approval in accordance with Air

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Force DAR Supplement § 1-313(c)(ii) (June 17, 1977). This Air Force regulation requires a firm seeking Government approval as a manufacturing source to submit the technical data of another source and certify that the data was properly obtained and legally may be used.

There is no legal merit to Service's argument. Alamo did not bid as a manufacturer and has not sought approval as a manufacturing source. Instead, Alamo is furnishing the specified Garrett rings from Garrett's manufacturer and, the record shows, with Garrett's express approval. Thus, Air Force DAR Supplement § 1-313(c)(ii) does not apply. Moreover, neither DAR § 1-313 nor Air Force DAR Supplement § 1-313 requires that purchases be made from approved sources. The former merely permits such a restriction, while the Air Force regulation states that the designation of an item as restricted to approved sources does not preclude consideration of a nonmanufacturing source when the item is manufactured by an approved source. The solicitation here simply did not limit the procurement to approved sources.

Service also complains that Alamo did not have Garrett's authorization to furnish the part before the contract was awarded on November 18, 1982. The basis for this complaint is a letter in the record from Precision to Garrett dated December 13, requesting Garrett's written authorization for the sale to Alamo, which Garrett approved on December 17.

The solicitation did not require such authorization. Nonetheless, Alamo had to be in a position to furnish what it offered. Alamo submitted its offer in response to the August 11 solicitation by letter of September 8, and advised the Air Force in an October 8 letter that it intended to purchase the rings from Precision, whose product obviously was acceptable. Whether Alamo in fact could furnish the rings was a matter of the firm's responsibility. Fil-Coil Company, B-206777, March 29, 1982, 82-1 CPD 291. Despite the fact that neither Alamo nor Precision may have had Garrett's express authorization before award, the contracting officer, before making the award, found that Alamo indeed would be able to furnish the rings as required by the contract, that is, that Alamo was responsible. See DAR § 1-902, 1-904. Our Office does not review a contracting officer's affirmative determination of responsibility, absent a showing of possible fraud or failure to apply definitive responsibility criteria. Aero Products Research, Inc., B-200820, January 15, 1982, 82-1 CPD 33. Since neither of these exceptions applies here, this protest ground is dismissed.

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The protest is denied in part and dismissed in part.

for *Milton J. Fowler*
Comptroller General
of the United States